

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	No. 19-2512
v.	:	
	:	Board Case No.:
ABLE BUILDING MAINTENANCE AND ITS	:	22-CA-194688
SUCCESSOR EMPIRE FACILITY SOLUTIONS, LLC	:	
	:	
Respondent	:	

MOTION TO DISMISS WITHOUT PREJUDICE THE BOARD’S
APPLICATION FOR SUMMARY ENTRY OF A JUDGMENT
ENFORCING THE BOARD’S ORDER

To the Honorable, the Judges of the United States
Court of Appeals for the Third Circuit:

Pursuant to Federal Rule of Appellate Procedure 42(b), the National Labor Relations Board (“the Board”), by its Acting Deputy Associate General Counsel, respectfully moves to dismiss, without prejudice, the Board’s application for enforcement in the above-captioned case, and shows:

1. The Board’s application for summary entry of a judgment enforcing an order of the National Labor Relations Board against Able Building Maintenance and its successor Empire Facility Solutions, LLC (“Respondents”) in the above-captioned case (No. 19-2512), was docketed on July 9, 2019. To date no appearance on behalf of Respondents has been filed in this matter.

2. One of the respondents in this action, Able Building Maintenance (“Able”), has fully complied with the Board’s order. Efforts to obtain compliance from respondent Empire Facility Solutions, LLC (“Empire”) continue. The Board now seeks to withdraw its application for summary entry of judgment without prejudice to the Board’s right to file a future enforcement application, in the event that Able fails to comply with the Board’s ongoing cease and desist obligation or the Board is unable to obtain compliance from Empire. *See NLRB v. Mexia Textile Mills*, 339 U.S. 563, 567 (1950) (because “[a] Board order imposes a continuing obligation” and because “the Board is entitled to have [any] resumption of the unfair practice barred by an enforcement decree,” an employer’s compliance does not deprive the Board of the right to secure enforcement of the order from an appropriate court); *NLRB v. Raytheon Co.*, 398 U.S. 25, 27-28 (1970) (same).

3. Accordingly, the Board seeks to withdraw its application, without prejudice, each side to bear its own costs.

WHEREFORE, the Board requests that the Clerk enter an order dismissing without prejudice the above captioned case, each side to bear its own costs.

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated in Washington, DC
this 26th day of July, 2019

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g)(1), the Board certifies that its motion contains 395 words of proportionally spaced, 14-point type, and that the word processing system used was Microsoft Word 2016.

/s/ David Habenstreit
David Habenstreit
Acting Deputy Associate General Counsel
NATIONAL LABOR RELATIONS BOARD
1015 Half Street, SE
Washington, DC 20032

Dated at Washington, DC
this 26th day of July, 2019

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Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. I further certify that the foregoing document was served by first class mail upon the following parties at the addresses listed below:

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/s/ David Habenstreit
David Habenstreit
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National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dated in Washington, DC
this 26th day of July, 2019